

The 18th August, 1986

No. 9/7/86-6Lab./5760.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Haryana Roadways, Bhiwani.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 89 of 83

between

SHRI RAM PHAL SINGH, WORKMAN AND THE MANAGEMENT OF M/S
HARNANA ROADWAYS, BHIWANI

Shri S. S. Gupta, A.R. for the workman

Shri Vijay Vir Singh, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workman Shri Ram Phal Singh and the management of M/s Haryana Roadways, Bhiwani, to this Court, for adjudication,—*vide Haryana Government Gazette* Notification No. ID/HSR/60-81/30897-902, dated 30th June, 1983:—

Whether the termination of services of Shri Ram Phal Singh was justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notice were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Conductor for the last many years and all through his work and conduct was satisfactory but the respondent choose to terminate his services,—*vide* order dated 2nd February, 1981, which was illegal and unjustified and against the provisions of Civil Services Rules and Punjab Punishment and Appeal Rules and the provisions of Article 311 of the Constitution. It is further alleged that a farce of an enquiry was conducted into the trumped up charges against him, in which, he was not given complete opportunity of participation.

3. In the reply filed by the respondent, preliminary objections taken are that the management has since lost confidence in the workman, who was removed from employment after a proper and domestic probe was held into the allegations of mis-appropriation of Government money. In the alternative it is pleaded that in case, domestic enquiry is not to be found proper, the management be given opportunity to adduce evidence on merits in relation to the mis-conduct of the petitioner. It is further alleged that the present reference is not maintainable. On meri's, it is admitted that the petitioner was working as a Conductor but it is denied that his work and conduct was satisfactory. It is further alleged that the petitioner committed mis-appropriation of Rs. 20-40 in which, a domestic probe was held, in which, he was found guilty and the General Manager of the respondent Roadways relying upon the report of the Enquiry Officer passed the order of termination, which was legal and justified under the circumstances.

4. On the pleadings of the parties, the following issues were settled for decision by me on 19th November, 1984.

- (1) Whether a valid and proper enquiry was held before terminating the services of the workman ? OPR.
- (2) Whether the management has lost confidence in the workman ? OPR.
- (3) As per terms of reference.

5. The managements examined MW-1 Shri J. S. Yadav, the then General Manager, Haryana Roadways Bhiwani, MW-2 Shri Jagbir Singh, Law Officer, MW-3 Shri Rajinder Parshad, clerk. The workman appeared as his own witness as WW-1

6. Heard. Documents perused.

7. At the very outset it may be stated that the learned Authorised Representative of the parties agreed that in case, issue regarding domestic enquiry is answered against the respondent, the case need not be adjourned any further and so, the learned Authorised Representative of the workman also argued the case on merits under section 11-A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

8. My findings on the preliminary issue No. 1 are as under :—

9. The learned Authorised Representative of the petitioner challenged the enquiry findings on the ground that the same were recorded on the basis of conjunctures and surmises and that the enquiry report as not a speaking one, which unjustifiably tilts in favour of the management. He further contended that the very basis of the allegations against the petitioner has not been placed on record which was report of the Inspector, on the basis of which, a charge-sheet was issued to the petitioner and that the Enquiry Officer without any good reason dis-believed the defence produced by the workman during the enquiry proceedings. He was also critical of the fact that the way bill has been unjustifiably withheld by the respondent on the flimsy grounds that the same were got burnt in the fire, which broke out in the record room of the respondent roadways. In my opinion, the learned, Authorised Representative of the petitioner was on fragile footing in raising most of the contentions. Enquiry was conducted by a person well versed in law, who strictly adhered to the principles of natural justice in conducting the enquiry proceedings. The workman is a brazen liar when he stated that the statement of Shri Dharam Pal Inspector, who conducted checking of the bus under supervision of Shri J. S. Yadav, the then General Manager, Haryana Roadways, Bhiwani Depot (an officer well known in the State for his uprightness and honesty) was not recorded in his presence and that Enquiry Officer obtained signatures under duress. The Enquiry Officer had no reason to do so or to put pressure upon the petitioner. The defence adduced by the workman during the enquiry proceedings does not seem to be plausible, because both the witnesses Shri Joginder Singh and Jaspal were not consistent in supporting the defence offered by the petitioner. The version given by Shri Joginder Singh witness that many passengers were sitting on the roof of the bus were not supported by Shri Jaspal Singh another witness examined by the petitioner. Furthermore, I see no reason to disbelieve the statement of Shri J. S. Yadav, a responsible official of the Haryana Civil Services (Executive Branch) that the checking of the bus was conducted in his presence and seventeen passengers were found travelling without ticket. He has not supported the version of the petitioner that the fare was got paid to him by the Inspector after checking and then he got the tickets issued. If, that had been the case, Shri Yadav at least would not have been a party to a complaint against the petitioner, because he had no reason to do so. The gist of the complaint was made known to the petitioner in the charge-sheet issued to him and as such, it is immaterial if copy of the complaint was not given to him. The enquiry report in the present case is a well reasoned document, in which, evidence adduced during the enquiry proceedings has been ably appraised by the Enquiry Officer and he has arrived at his findings after weighing the evidence in golden scales. Under these circumstances the enquiry held in this case is held to be fair and proper and as such, this issue is answered in, favour of the management.

Issues Nos. 2 and 3.—

10. These issues being akin in nature merit discussion together. It is a known fact that conductors of the State Transport in Haryana are in the habit of nibbling at the revenues of the Roadways. It may be possible that their may be certain constraints upon them to indulge in these nefarious activities but these are no concern of this Court. This Court is aware of the fact that employment opportunities in India are very scarce. The livelihood of a person can not be easily snatched but at the same time this Court can not countenance a situation where the State Transport may go bankrupt because of the acts of its employees. Most of the State Transports, in the Country are in the red, though, happily Haryana Roadways does not fall in that category but the evil of embezzlement has to be nipped in the bud. The Hon'ble High Court of Punjab and Haryana in the recent authority reported in 1984 (3) SLR 514 *State of Punjab and others vs. Surat Singh and others*, has also cautioned the Courts against ordering reinstatement of employees indulging in embezzlement. The Hon'ble High Court has observed that the Court should explore the possibility of providing alternative employment to such employees, in case, reinstatement is warranted under the circumstances of the particular case. In the present case, no such circumstances exist. So, this Court is not inclined to interfere with the order of termination under section 11-A of the said Act, because the punishment awarded to the petitioner is not glaringly disproportionate in relation to his proved mis-conduct of embezzlement. So, the petitioner is not entitled to any relief. The reference is answered and returned accordingly,

There is no order as to costs.

Dated the 10th June, 1986.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bhiwani.

Endorsement No. 89-83/853, dated 24th June, 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bhiwani.

No. 9/7/86-6Lab./5760.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s The Sonapat Central Co-operative Consumers Store Ltd., Sonapat.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 314 of 78

between

SHRI SATISH KUMAR, WORKMAN AND THE MANAGEMENT OF M/S. THE
SONEPAT CENTRAL CO-OPERATIVE CONSUMERS STORE LTD, SONEPAT.

Shri Bhim Singh Yadav, A.R. for the workman.

Shri M. Kaushal, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the workman Shri Satish Kumar, and the management of M/s. The Sonapat Central Co-operative Consumers Store Ltd., Sonapat, to this Court, for adjudication,—*vide* Haryana Government Gazette, Notification No. 1D/SPT/114-78/53518, dated 28th November, 1978:—

Whether the termination of services of Shri Satish Kumar was justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Salesman since 1st July, 1973 and his last wages drawn were Rs. 325 p.m. on the date of his termination and that all through his work and conduct was satisfactory, because he was granted annual increment by the respondent and that he was posted as Store Kceper in the year 1975-76 to assist Shri Suresh Kumar Jain, who was already working as a Store Keeper and it was the duty of Shri Jain, to sell articles from the Store and receive payment from the customers and issue them necessary bills and the petitioner was simply required to initial the bills already prepared and signed by Shri Jain. It is further alleged that Shri Tara Chand Sharma the then General Manager of the respondent Store at Sonapat asked the petitioner to issue centrolled cloth from the store to Depot Holders from outside the district, which he did not agree, which angered Shri Tara Chand Sharma, who held out a threat that he will teach the petitioner a lesson. Furthermore Shri Tara Chand wanted the petitioner to help the Congress (I) sponsored candidate in the election to which he also did not agree and so, he was served with a show cause notice dated 3rd November, 1977 and the allegation contained in the same were false and fabricated and the petitioner was not allowed access to the records of the store to rebut the charges framed against him. It is further alleged that no proper charge-sheet was issued to him, nor any valid and proper enquiry was held and that again on 11th April, 1978 another show cause notice was issued to him, a perusal of which, goes to show that the respondent had already taken decision to terminate the services of the petitioner, so, the issuance of the show cause notice was an empty formality and ultimately his services were terminated on 3rd May, 1978 *vide* letter handed over to him, dated 27th May, 1978. He has alleged his termination to be improper, unlawful, against principle of natural justice and violative of the provisions of the Industrial Disputes Act, 1947 (herein after referred to as the Act).

3. In the detailed reply filed by the respondent, preliminary objections taken are that since the applicant is not a workman as defined in section 2 (s) of the said Act, so, his dispute

is not referable to the Labour Court for adjudication and that since the applicant was working in the establishment covered under the Punjab Shops and Commercial Establishment Act, the provision of the Industrial Disputes Act, 1947 was not attracted in this case. On merits, most of the allegations made in the Claim Statement have been controverted.

4. On the pleadings of the parties, the following issues were framed on 10th May, 1979:—

- (1) Whether Shri Satish is covered within the definition of section 2 (s) of the I. D. Act ?
- (2) Whether the establishment management does not fall within the definition of Industry and I. D. Act ?
- (3) As per reference.

5. The management examined MW-1 Shri O. P. Dhama, General Manager, MW-2 Shri Inder Jeet Sharma, Assistant Examiner, MW-3 Shri T. C. Gupta, Head Clerk, Hindu College, Sonapat, MW-4 Shri Tara Chand Sharma, MW-5 Shri S. K. Sharma, Dena Bank, Chandni Chowk, Delhi. On the other hand, the petitioner himself appeared as WW-3 and also examined MW-1 Deep Chand, WW-2 Shri Yogi Ram, Assistant Manager.

6. Heard at length. Documents perused. My findings on the issues framed are as below :—

Issue No. 1 :

7. There is no dispute that the primary and dominant duty was to assist in the sale of goods at the store where he was posted. He personally used to handle goods to show to the customers. His duties are not confined to the canvassing of goods lying at the store with the respondent. So, in view of the law laid down in 1981 (14) Lab. I.C. page 893 *Management of M/s. Bharat Kala Kendra Pvt. Ltd V/s R.K. Baweja and others*, the petitioner squarely falls within the ambit of term "workman" as defined in section 2(s) of the said Act. In view of this settled legal position, the learned Authorised Representative of the respondent was lukewarm in pressing this issue in favour of the management.

Issue No. 2 :

8. The primary function of the respondent is to make available essential commodities of daily use to the poorer section of the Society. The respondent is running consumer store in the rural areas for these facilities. So, from the nature of duties of the respondent being performed by the respondent, there is no dispute that the respondent/Store is squarely covered within the scope of the term "industry" as defined in section 2(j) of the said Act. Furthermore, the term (industry) has been given all embracing definition in the historic authority rendered by the Hon'ble Supreme Court of India reported in 1978 Lab. I. C. 467 *Benglore Water Supply and Sewerage Board Vs. A. Rajappa and others*. Even Charitable institutes like hospitals, educational camps like Universities have been brought within the purview of the term "industry" as defined in section 2(j) of the said Act. So, there is no difficulty in answering this issue in favour of the workman.

Issue No. 3 :

9. The learned Authorised Representative of the respondent Shri Kaushal forcefully contended that services of the petitioner were terminated after a lawful enquiry was held into the various acts of mis-conduct, disobedience, contumacious behaviour, willfully absenteeism without leave and as such, his termination was legal and justified. In support of this contention he has drawn my attention a copy of the show cause notice Ex. WW-3/1, reply of the workman Ex. WW-3/2. The said show cause notice is dated 11th October, 1977/3rd November, 1977. The same contains the various allegations against the petitioner. As per the management a detailed probe was held into these charges by the Assistant Registrar, Co-operative Societies, Sonapat. His report is Ex. MW-1/4. Luckily the respondent has placed on record the original enquiry proceedings recorded by the Authorised Representative. In conducting the enquiry, the Assistant Registrar has given a complete go-bye to the often sanctified principle of natural justice. It seems that the said officer was not at all aware of the basic provision of law under which a domestic probe is required to be conducted. He has adopted a novel method in conducting the enquiry proceeding. He recorded the statement only one witness Shri Om Parkash Dhama the then General Manager of the respondent at least ten times to prove the various charges against the petitioner. After recording statement of Shri Dhama on one charge he chose to record the statement of the petitioner in defence. No opportunity of cross examination of Shri Dhama was ever afforded to the petitioner. So much so, that the statement of Shri Dhama has not been signed by the Enquiry

Officer and only at the sag end of the proceedings the same have been signed by him. So, the learned Authorised Representative of the respondent had a very tough time in offering any defence to the procedure adopted by the Enquiry Officer in conducting the enquiry proceedings. Sparing harsh words to the officer, who conducted domestic enquiry, suffice to observe that the enquiry in this case was conducted in flagrant disregard of the principles of natural justice and the procedure adopted by the Enquiry Officer was unheard of in the annals of judicial history. There is no gainsaying the fact that domestic probes are usually conducted by persons, who are laymen and as such, are not required to adhere to the sophisticated rules of evidence but at the same time, they cannot give a complete go-bye to the settled legal position, which in this case, have been given by the Enquiry Officer. So, the enquiry in this case was absolutely defective and is of no assistance to the respondent in proving charges against the petitioner.

10. Normally the issue regarding domestic enquiry should have been tried as preliminary issue but no such order was passed by my learned predecessor. Both the parties have adduced evidence on merits also regarding the allegations against the petitioner and the defence taken by him. The respondent has placed on record a plethora of documents, reports, memos served upon the petitioner for various acts of omissions and commissions committed by him. The petitioner was entrusted with the sensitive duties of selling goods to the people in the countryside. Closing hours of the store was 7.00 p.m. The petitioner did appear in the B.A. part (II) examination in the month of April-May, 1977 from the Hindu College, Sonapat. Opinion in that behalf was given to respondent Store by the Principal, Hindu College,— vide Ex. MW-1/29. Ex. MW-1/5 is a letter of request of the petitioner to the Store authority at Sonapat that he be allowed to close the Store at Murthal one hour before the schedule time. His request was declined. Even then the petitioner persisted in attending evening classes at Hindu College Sonapat and in that behalf various memos were issued to him, copies of which, are Ex. MW-1/8, MW-1/9, MW-1/11, MW-1/12, MW-1/13, MW-1/14, MW-1/15, so there is no scope for dispute that the petitioner did appear in B. A. Part II examination held in the month of April-May, 1977 from the Hindu College, Sonapat without prior permission from the store authority and that he remained obdurate in attending the evening classes after closing the store before schedule time without proper permission from the respondent.

11. The petitioner was also charge-sheeted for not depositing the sales-proceeds as per rules daily. Regarding this act of omission, he was issued various memos MW-1/18, MW-1/19, and MW-1/20. The petitioner admitted his mistakes and the copy of the same is Ex. MW-1/22. He assured the authorities to be punctual in future. For this charge against the petitioner stands proved.

12. The petitioner was in the habit of misbehaving with the customers and in that behalf memos are Ex. MW-1/30, MW-1/33 and MW-1/34. There is no cogent explanation of the petitioner in reply to these charges. In that behalf Shri Kaushal referred to 1975 Vol. 8 Lab. I. C. 1435 Management of M/s Eastern Electric Trading Company vs. Baldev Lal. In this case their Lordships of the Hon'ble Supreme Court of India held that where the charge is that the workman behaved badly with the customers or the employer firm is proved, the workman deserves no punishment short of dismissal. Beside the various acts of omissions and commissions detailed and discussed above, there are many more of minor nature, which makes the petitioner not a fit person to deserve reinstatement. It has been held in 1980 Vol. I LLJ 425 between Gopala Krishna Mills Private Ltd. and Labour Court and another that length of service of the delinquent employee or the fact that he is a married man is no ground to take a lenient view the question of punishment in case the charges of misconduct against him are of serious nature. In the present case, beside the fact that the petitioner has been proved to be guilty of various acts of misconduct, he has remained decently employed since 1st November, 1982 with Dena Bank on a handsome salary of Rs. 1,000. So, reinstatement of the petitioner in this case is absolutely ruled out and will not be in the interest of the petitioner. In view of the fact that most of the allegations of misconduct, contumacious behaviour, unlawful absenteeism, stands established against the petitioner, order of termination passed against him was legal and lawful. The petitioner is not entitled to any relief. The reference is answered and returned accordingly with no order as to cost.

B. P. JINDAL,

Dated, the 16th May, 1986.

Presiding Officer,
Labour Court, Rohtak.
Camp Court, Bahadurgarh.

Endst. No. 314-78/845, dated the 24th June, 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.
Camp Court, Bahadurgarh.